

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
NO 7:18-CR-10-1H

UNITED STATES OF AMERICA,)
)
 v.)
)
MARCIO SANTOS-PORTILLO,)
)
 Defendant.)
)

ORDER

This matter is before the court on defendant's motion to suppress [DE #22]. The government responded in opposition to the motion to suppress [DE #23] and defendant replied. The government filed a surreply in opposition [DE #30]. The matter was referred to United States Magistrate Judge Kimberly A. Swank for entry of a memorandum and recommendation (M&R). Following an evidentiary hearing, Judge Swank entered an M&R on May 31, 2019, recommending denial of the motion. The defendant filed objections [DE #70] on June 14, 2019. This matter is ripe for adjudication.

Under Rule 59(b) of the Federal Rules of Criminal Procedure, a district judge must consider de novo any portion of the M&R to which objection is properly made.

Defendant objects to the M&R recommending denial of his motion to suppress, raising a legal objection to the recommendation that a violation of 8 U.S.C. § 1357 does not warrant application of the exclusionary rule in this case. Defendant breaks his legal

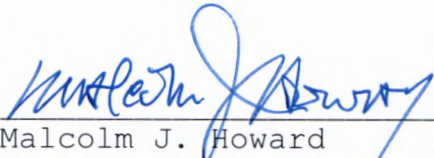
objection into several arguments: (1) Supreme Court precedent does not require that a constitutional violation accompany a statutory violation for the exclusionary rule to apply; (2) the unlawful arrest implicated important constitutional concerns; (3) the government's widespread and systemic statutory violations compel exercise of the court's supervisory authority; and (4) suppression of the fingerprint evidence and the immigration A-File linked to that fingerprint evidence fulfills the purpose of the exclusionary rule.

The court has reviewed this matter carefully. After careful consideration, the court finds the magistrate judge has made proper and correct findings and conclusions and finds the objections to be without merit. Specifically, the court finds the magistrate judge correctly states the law that there is "no exclusionary rule generally applicable to statutory violations." United States v. Segura-Gomez, No. 4:17-CR-65-1FL, 2018 WL 6259222 at *4 (quoting United States v. Clenney, 631 F.3d 658, 667 (4th Cir. 2011)). Additionally, as defendant voluntarily exposed himself to public view upon exiting his residence and his arrest was based upon probable cause to believe his presence in the United States violated 8 U.S.C. § 1326, his arrest was not in violation of the Fourth Amendment.

This court, having conducted a de novo review of the M&R and other documents of record, finds the recommendations of the

magistrate judge are in accordance with the law and should be approved. Accordingly, the court hereby adopts the recommendations of the magistrate judge as its own; and, for the reasons stated therein, the defendant's motion to suppress [DE #22] is hereby DENIED.

This 10th day of July 2019.



Malcolm J. Howard
Senior United States District Judge

At Greenville, NC
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